Adrian Tio Sii Hoong & Anor v Jabatan Kesihatan Negeri Sarawak Malaysia & Ors

HIGH COURT (KUCHING) — SUIT NO KCH-21-28/12 OF 2012
RHODZARIAH BUJANG J
30 OCTOBER 2014

Contract — Claims — Claim for work done — Design and construction of new headquarters and integrated quarters — Claim made by architects — Allegation that architects volunteered to design without any legal commitment — Whether architects submitted any conceptual design, planning, schematic drawing as required — Whether there was binding agreement — Whether architects' appointment include integrated quarters project on top of or in addition to headquarters project

The plaintiffs, who were architects, filed this action for work done in respect of the design and construction of a new headquarters and integrated quarters. The Ministry of Health is the second defendant, the public work department, the third defendant and the Government of Malaysia as the obligatory last co-defendant. The plaintiffs claimed that they began working on the design of the headquarters sometime in April 2005 but only received an official letter of appointment dated 9 February 2007 but on that letter's caption the project is stated as the design and constructions of the headquarters ('the Petra Jaya site'). The reason for that was the sitting of that project at Jalan Tun Abang Haji Openg, Kuching ('the Kuching site') was not approved by the State Planning Authority whilst the re-siting to Petra Jaya site was. Despite that letter of appointment, on 25 May 2007, another firm of architect, Arkiteks HIF Sdn Bhd was appointed as the consulting architect for both the headquarters and the integrated quarters at the Petra Jaya site. It was not disputed that the plaintiffs' official appointment vide the said letter of appointment was never officially terminated by the defendants. The second defendant informed the third defendant that they will not pay the plaintiffs the fees demanded. The defendants pleaded, firstly, that the plaintiffs volunteered to design the headquarters at the Kuching site without any legal commitment but in the hope of being appointed as the consultant architect if the project was approved by the government. There were, they stated, in fact two different projects — one the headquarters, the other the integrated quarters and that the plaintiff's appointment for the headquarters at Petra Jaya site was subject to, inter alia, a memorandum of agreement to be signed but which was never signed thus negating the need to formally terminate their appointment. They pleaded that the plaintiffs never submitted any conceptual design, planning, schematic drawing etc as was required under the letter of appointment and were

uncontactable since October 2007. The defendants only submitted the relevant documents and drawing in 2012 but without the original copies and the defendants were unable therefore to verify the plaintiffs' claim including the reimbursable. The plaintiffs admitted that the memorandum of agreement was not signed but contended that there was nonetheless a binding agreement between them which was partly oral, partly written and partly from the conduct of the parties and the defendants' authorised servants and representatives. The issues were how much was the remuneration due to the plaintiffs including whether the said remuneration should be based on the Board of Architect Malaysia's Minimum Scale of Fees; and whether the plaintiffs' appointment includes the integrated quarters project on top of or in addition to the headquarters project.

Held, allowing the claim:

(1) There was in fact one project for the design and construction of the headquarters but at two different sites when the earlier Kuching site was relocated to the Petra Jaya site which relocation also saw the addition of the integrated quarters. The plaintiffs did not totally do the work on a voluntary basis. The plaintiffs were in all reasonable probability initially doing work for the headquarters at the Kuching site on a voluntary and proactive basis as alleged by the defendants and evidenced by the plaintiffs' own admission (see paras 6 & 10).

(2) The plaintiffs acknowledged that the work was initially done for the headquarters project at the Kuching Site was without any official appointment and was done 'proactively' in the hope of an official appointment. The plaintiffs were issued with a letter of authorisation dated 8 May 2006 by the first defendant's deputy director, to prepare and submit drawings for subdivision, sitting application, architectural building plans and all associated works to relevant approving authorities such as Lands and Surveys, Kuching Division and the local council. However, this was not, obviously, a letter of appointment and must be read in the context of the circumstances. The essence of that letter was also its evidential value as corroborative of the plaintiffs' contention as pleaded that indeed they have done work on the headquarters project at the Kuching site (see para 9).

(3) There were indeed procedures and governmental/departmental requirements in place but the issuance of the letter of appointment with the stipulated condition to the plaintiffs that it did not include the integrated quarters project and which were duly accepted by them, created a binding contract between the parties. In other words, there was an offer, then an acceptance of that offer with a valuable/lawful consideration, the payment of the stipulated amount for the work to be done — all ingredients to satisfy the creation of a binding contract under

the law. Thus, when the defendants appointed another architect firm without a lawful termination of the plaintiffs' appointment, they have breached that contract with the plaintiffs for which they were entitled to compensation (see para 14).

[Bahasa Malaysia summary

Plaintif-plaintif yang merupakan arkitek, memfailkan tindakan ini untuk kerja selesai berkenaan dengan reka bentuk dan pembinaan ibu pejabat dan kuarters bersepadu baharu. Kementerian Kesihatan adalah defendan kedua, jabatan kerja awam, defendan ketiga dan Kerajaan Malaysia sebagai defendan bersama wajib yang terakhir. Plaintif mendakwa bahawa mereka mula mereka bentuk ibu pejabat ketika pada bulan April 2005 tetapi hanya menerima surat rasmi pelantikan bertarikh 9 Februari 2007 tetapi bahawa kapsyen pada surat projek itu dinyatakan sebagai reka bentuk dan pembinaan ibu pejabat ('tapak Petra Jaya'). Sebab bagi yang demikian ialah kedudukan untuk projek itu di Jalan Tun Abang Haji Openg, Kuching ('tapak Kuching') tidak diluluskan oleh Pihak Berkuasa Perancang Negeri manakala penempatan semula ke tapak Petra Jaya diluluskan. Walaupun surat pelantikan, pada 25 Mei 2007, satu lagi firma arkitek, Arkiteks HIF Sdn Bhd telah dilantik sebagai arkitek perunding bagi kedua-dua ibu pejabat dan kuarters bersepadu di tapak Petra Jaya. Ia tidak dipertikaikan bahawa pelantikan rasmi plaintif melalui surat pelantikan tersebut tidak pernah secara rasmi ditamatkan oleh defendan. Defendan kedua memaklumkan kepada defendan ketiga bahawa mereka tidak akan membayar kepada plaintif-plaintif fi yang dituntut. Defendan-defendan memplidkan, pertama, plaintif-plaintif secara suka rela mereka ibu pejabat di tapak Kuching tanpa apa-apa komitmen undang-undang tetapi dengan harapan dilantik sebagai arkitek perunding jika projek tersebut diluluskan oleh kerajaan. Ada terdapat, dinyatakan oleh mereka, sebenarnya dua projek berlainan — satu ibu pejabat, kedua kuarters bersepadu dan bahawa pelantikan plaintif di tapak Petra Jaya tertakluk kepada, antara lain, memorandum perjanjian untuk ditandatangani tetapi tidak pernah ditandatangan oleh itu membatalkan keperluan untuk secara rasmi menamatkan pelantikan mereka. Mereka memplidkan bahawa plaintif tidak pernah menyerahkan apa-apa reka bentuk konsep, perancangan, skema lukisan dan lain-lain seperti yang dikehendaki di bawah surat pelantikannya dan tidak dapat dihubungi sejak Oktober 2007. Defendan hanya mengemukakan dokumen dan lakaran berkaitan pada tahun 2012 tetapi tanpa salinan asal dan defendan tidak dapat oleh itu mengesahkan tuntuan plaintif termasuk bayaran semula. Plaintif mengakui bahawa memorandum perjanjian tidak ditandatangani tetapi menegaskan bahawa tetap terdapat perjanjian yang mengikat antara mereka yang sebahagiannya lisan, sebahagiannya ditulis dan sebahagian daripada perilaku pihak-pihak dan pegawai dan wakil defendan. Isu-isu yang adalah berapa banyak adalah imbuhan kerana plaintif termasuk sama ada ganjaran tersebut hendaklah berasaskan kepada Lembaga Arkitek Skala Minimum Malaysia ditetapkan; dan sama ada pelantikan plaintif termasuk projek kuarters bersepadu di atas atau

sebagai tambahan kepada projek ibu pejabat.

Diputuskan, membenarkan tuntutan:

(1) Ada sebenarnya satu projek bagi reka bentuk dan pembinaan ibu pejabat tetapi di dua tempat yang berbeza apabila tapak Kuching sebelum ini dipindahkan ke tapak Petra Jaya yang penempatan semula juga memperlihatkan penambahan kuarters bersepadu. Plaintif tidak sama sekali melakukan kerja-kerja secara sukarela. Plaintif dalam segala kemungkinan yang munasabah pada mulanya melakukan kerja untuk ibu pejabat di tapak Kuching secara sukarela dan proaktif seperti yang didakwa oleh defendan dan dibuktikan dengan kemasukan plaintif sendiri (lihat perenggan 6 & 10).

(2) Plaintif mengakui bahawa kerja yang pada asalnya dilakukan untuk projek ibu pejabat di Tapak Kuching adalah tanpa apa-apa pelantikan rasmi dan dilakukan 'proaktif' dengan harapan untuk pelantikan rasmi. Plaintif telah diberi surat kebenaran bertarikh 8 Mei 2006 oleh timbalan pengarah defendan pertama, untuk menyediakan dan mengemukakan lukisan untuk dipecah bahagi, duduk permohonan, pelan bangunan seni bina dan semua kerja-kerja yang berkaitan kepada pihak berkuasa meluluskan yang relevan seperti Bahagian Kuching Tanah dan Ukur, dan majlis tempatan. Walau bagaimanapun, ini tidak, jelas, surat pelantikan dan perlu dibaca dalam konteks keadaan. Inti pati surat itu juga nilai keterangan sebagai bukti kebenaran hujah plaintif sebagai mengaku bahawa sesungguhnya mereka telah melakukan kerja-kerja projek ibu pejabat di tapak Kuching (lihat perenggan 9).

(3) Sememangnya, terdapat prosedur dan keperluan kerajaan/jabatan di tempat tetapi penerbitan surat pelantikan dengan syarat yang ditetapkan kepada plaintif bahawa ia tidak termasuk projek kuarters bersepadu dan yang telah diterima dengan sewajarnya oleh mereka, mencipta satu kontrak yang mengikat antara pihak-pihak. Dalam erti kata lain, ada tawaran, maka satu penerimaan tawaran itu dengan balasan berharga/sah, pembayaran amaun yang ditetapkan untuk kerja-kerja yang perlu dilakukan — semua bahan-bahan untuk memenuhi penciptaan kontrak yang mengikat di bawah undang-undang. Oleh itu, apabila defendan melantik seorang lagi firma arkitek tanpa penamatan sah pelantikan plaintif, mereka telah melanggar kontrak itu dengan plaintif yang mana mereka telah berhak mendapat pampasan (lihat perenggan 14).]]

Notes

For cases on claim for work done, see 3(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 3767–3769.

Cases referred to

Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd [1996] 2 MLJ 57; [1997] 2 CLJ 104, CA (refd)
Tindok Besar Estate Sdn Bhd v Tinjar Co [1979] 2 MLJ 229, FC (refd)

Legislation referred to

Rules of Court 2012 O 59 r 23(1)

Bong Ah Loi (Suhaili & Bong Advocates) for the plaintiff.
Sandra Ko Chze Siew (Senior Federal Counsel (Civil) Sarawak Attorney General's Chambers) for the defendant.

Rhodzariah Bujang J:

[1] The two plaintiffs, a husband and wife team who practiced as architects in a firm called ATCT Architects are both registered with Lembaga Arkitek Malaysia. They have filed this action for work done in respect of the design and construction of a new headquarters and an integrated quarters to be sited initially at Lots 78 and 81, Section 35 of Kuching Town Land District at Jalan Tun Abang Haji Openg, Kuching for Sarawak's Health Department who is being sued as the first defendant in this action. The Ministry of Health is the second defendant, the Public Work Department, the third defendant and the Government of Malaysia as the obligatory last co-defendant.

[2] The said projects were approved under the 9th Malaysia Plan and the plaintiffs claimed that they began working on the design of the headquarters sometime in April 2005 but only received an official letter of appointment dated 9 February 2007 but on that letter's caption the project is stated as the design and constructions of the headquarters at Lot 78, Petra Jaya , Kuching ('the Petra Jaya site'). The reason for that is the siting of that project at Jalan Tun Abang Haji Openg, Kuching ('the Kuching site') was not approved by the State Planning Authority whilst the re-siting to Petra Jaya site was. Despite that letter of appointment, on 25 May 2007, another firm of architect, Arkiteks HIF Sdn Bhd was appointed as the consulting architect for both the headquarters and the intergrated quarters at the Petra Jaya site. It is not disputed that the plaintiffs official appointment vide the said letter of appointment was never officially terminated by the defendants. Vide a letter dated 26 July 2012, the second defendant informed the third defendant that they will not pay the plaintiffs the fees which they have been demanding. The plaintiffs filed this action for the following reliefs against the defendants, jointly and severally:

(1) A declaration that the defendants are liable to compensate the plaintiffs on a total loss of project fees basis in the sum of RM3,586,940.

(2) Alternatively, judgment for the sums of RM80,419.50 and RM2,289,257.05.

(3) Judgment for RM75.274.15 being disbursements incurred for and on behalf of the defendants.

(4) Interest thereon at 5% per annum from the 13th October, 2011 until the date of judgment, pursuant to section 11 of the Civil Law Act 1951 and thereafter at 5% per annum until the date of final payment.

[3] In their amended defence, the defendants pleaded, firstly, that the plaintiffs volunteered to design the headquarters at the Kuching site without any legal commitment but in the hope of being appointed as the consultant architect if the project is approved by the government. There were, they stated, in fact two different projects—one the headquarters, the other the integrated quarters and that the plaintiff's appointment for the headquarters at Petra Jaya site was subject to, inter alia, a memorandum of agreement to be signed but which was never signed thus negating the need to formally terminate their appointment. They pleaded that the plaintiffs never submitted any conceptual design, planning, schematic drawing etc as was required under the letter of appointment and were uncontactable since October 2007. The defendants only submitted the relevant documents and drawing in 2012 but without the original copies and the defendants were unable therefore to verify the plaintiffs' claim including the reimbursables.

[4] In their reply to the amended defence the plaintiffs admitted that the memorandum of agreement was not signed but contended that there was nonetheless a binding agreement between them which was partly oral, partly written and partly from the conduct of the parties and the defendants' authorised servants and representatives. The plaintiffs justified the huge amount claimed by making reference to the Schedule of Fees of Lembaga Arkitek Malaysia's Minimum Scale of Fees. Though the documents forwarded in support of their claim were not signed, pleaded the plaintiffs further, however they were sent with signed cover letters from the plaintiffs. They referred to the first defendant's letter dated 5 June 2012 which the plaintiffs said not only validated the list of documents and drawings they have submitted but also confirmed the plaintiffs' involvement as the architect for the project. In the second last paragraph of that reply, the plaintiffs pleaded that the third defendant had evaluated the value of the work done by them after the letter of formal appointment (dated 9 February 2007) at RM153,759.30 but refused to evaluate the work done by them prior to that period.

[5] On 30 August 2013 I dismissed the plaintiffs' application to strike out the said defence and in my grounds of decision I held that there are two triable issues. The issues are, firstly, how much was the remuneration due to the plaintiffs including whether the said remuneration should be based on the Board of Architect Malaysia's Minimum Scale of Fees and secondly, whether the plaintiffs' appointment includes the integrated quarters project on top of or

in addition to the headquarters project. I have also stated in the ruling that the defence raised by the defendants that the plaintiffs were doing the work on a voluntary basis is negated by the letter of appointment which came with a schedule of payment. In respect of the other defence that there were two different projects, the one at the Kuching site and the other at the Petra Jaya site, I have dealt with that issue as follows in the said grounds which I would just as well incorporate in this judgment, written after a full trial of the action. This was what I said:

> Issue two: Change of site.
>
> That there was a change of site for the project from Lot 78 and 81 in Kuching to Lot 78 in Petra Jaya is an undisputed fact and the plaintiffs have shown that after the letter from Lands and Surveys Kuching Division's dated 9 October 2006 to the Director of the first defendant on the disapproval for the project to be sited on Lot 81 of the Kuching site, the third defendant issued the letter of appointment to the plaintiffs dated 9 February 2007. It is obvious from this letter of appointment that the change in the site for the project from Kuching to Petra Jaya has no relevance at all to the appointment of the plaintiffs as architect for the project because that letter of appointment came after the Kuching site was not approved. This can be further seen by the fact that on 3 May 2007, again after the issuance of that letter of appointment, the then Director of Health Sarawak, Dr Andrew Kiyu wrote to the plaintiffs to brief the Deputy Ministry of Health on the said project which briefing, as also stated in the said letter, will be followed by a visit to the project site at Petra Jaya (see p 115 to the affidavit in support of the first plaintiff which is part of exh AT7A). Reference is also made to the minutes of meeting on the project held on 18 May 2007 which was sent by cover letter of the third defendant's Director, one Ir Zahariah bt Mohamed in which the attendance of the first plaintiff was recorded (see exh AT18 to the first plaintiff's affidavit in support). The first plaintiff would not have been required to give the briefing nor attend that meeting there if he were not the appointed architect for the project or if his appointment was tied to the project at its original site and not at the relocated site in Petra Jaya.

[6] Having heard the evidence, I have no cause to depart from that findings which I now reiterate by saying that there was in fact one project for the design and construction of the headquarters but at two different sites when the earlier Kuching site was relocated to the Petra Jaya site which relocation also saw the addition of the integrated quarters. Further, having heard the evidence of the witnesses, I am not minded to change my earlier view that the plaintiffs did not totally do the work on a voluntary basis. Indeed I should not, submitted Mr Bong Ah Loi in his written submission in reply, based on the principle of res judicata citing the Court of Appeal's case of *Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd* [1996] 2 MLJ 57; [1997] 2 CLJ 104 where in respect of this issue it was held as follows:

> [3] The principle of res judicata is based on the need of giving a finality to judicial decisions; when a matter, whether on a question of fact or law, has been decided between two parties in one suit or proceeding and the decision is final, neither party

A will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata applies also as between two stages in the same litigation to the extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. A decision B given by a court at one stage on a particular matter or issue is binding on it at a later stage in the same suit or in a subsequent suit. The parties cannot raise a second time in the same suit an issue that has already been determined either expressly or by necessary implication. A failure to adhere to these principles may lead to chaos in the conduct of civil proceedings.

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[7] I must however stressed the undisputed evidence that the plaintiffs commenced work on the headquarters project when it was still to be had at the Kuching site without any formal letter of appointment, which is why the word 'totally' was stressed above. DW1, Dr Yao Sik King who was from August 2004 D until her retirement on 12 March 2007, Sarawak's Health Director gave evidence that the first plaintiff out of his own initiative approached them expressing his interest in the project. The management of the first defendant clearly agreed for Dr Yao Sik King confirmed that the first plaintiff was given the project brief (at pp 75–78 of exh P4, the plaintiff's bundle of documents E agreed as authenticity). She confirmed receiving the building plans for the headquarters project from the plaintiffs vide their cover letter dated 9 March, 2006 (at pp 145–147 of exh P4), the drawings at pp 99–123 and pp 176–182 of exh P6 (also the plaintiffs' bundle of documents agreed as to authenticity). She also agreed that the detailed building plans at pp 124–171 of exh P6 for the F headquarters project at the Kuching site were signed by her then deputy.

[8] This witness in her witness statement to the court at para 10 referred to her letter dated 28 August 2006 (exh D3) written to the director in charge of G Planning and Development of the second defendant wherein she requested that the second defendant issue a letter to support the appointment of the plaintiffs as a consultant for the headquarters project at the Kuching site. The first plaintiffs own letter to Dr Yao Sik King also dated 22 August 2006 (at p 1 of exh P3) which the former confirmed receiving encapsulates the essence of H their relationship at that material time and given its significance to this case, I would reproduce the said letter in its entirely below:

Our ref: ATCT/INS/6022/8

Date : 22nd August 2006

I The Director

Jabatan Kesihatan Negeri Sarawak

Jalan Tun Abang Haji Openg

93590 Kuching, Sarawak.

Attention: Dr. Yao Sik King

Dear Mdm,

CADANGAN BANGUNAN TAMBAHAN DAN UBAHSUAI ASRAMA ANGGERIK UNTUK DIJADIKAN IBU PEJABAT JABATAN KESIHATAN NEGERI SARAWAK Dl ATAS LOT 78 & 81, SECTION 35, KUCHING TOWN LAND DISTRICT, AT JALAN TUN ABANG HAJI OPENG, KUCHING, SARAWAK, MALAYSIA

RE: IBU PEJABAT JABATAN KESIHATAN NEGERI SARAWAK (RM Ke-9)

Further to our bona fide meeting at the Ibu Pejabat Jabatan Kerja Raya (Kuala Lumpur) between Cawangan Kerja Kesihatan; Pengarah Puan Ar. Puteh Kamariah Binti Mohamad and Ketua Penolong Pengarah Kanan Encik Ir. Chuan Thong Huat and the undersigned on the 18th August 2006 and the project presentation to your esteemed department, Jabatan Kesihatan Negeri Sarawak (with the present of Pengarah, Timbalan Pengarah, Ketua Penolong Pengarah and other senior officers) today.

It is indeed a matter of urgency in carrying out the implementation of the above stated Government project for the state Sarawak under the Ninth Malaysia Plan (Rancangan Malaysia Ke-9), which we (ATCT Architects) have humbly, *proactively carried out the detail architectural design with input of Civil & Structural, Mechanical & Electrical and Quantity Surveying elements incorporated following the Jabatan Kesihatan Negeri Sarawak Project Brief under the guidelines of Economic Planning Unit (EPU) Standard since October 2005.* We have also submitted the project Building Plans and detail drawings to the Local Government Authorities such as Lands and Surveys (Divisional and Headquarter), Jabatan Bomba Dan Penyelamat Negeri Sarawak (please refer to attached letter of receipt). Their comments and feedbacks has been incorporated.

Due to the project detail nature, required conservation, renovation, demolition works and retaining of existing structures, mature trees and other intricate historic valued elements; scheduled for custom construction methods, *we have completed the architectural drawings up to pre-tender stage.*

The project hereby can be further expedited through our immediate coordination of other supporting Consultants; namely Civil and Structure Engineer, Mechanical and Electrical Engineer, Quantity Surveyor and Land Surveyor.

The meeting has been agreed to appoint ATCT Architects as Lead Consultants and we shall forward names of other supporting Consultants to Ibu Pejabat Jabatan Kerja Raya (Kuala Lumpur) for their kind further action. (Emphasis added.)

[9] The plaintiffs therefore by their own evidence have acknowledged that the work that was initially done for the headquarters project at the Kuching site was without any official appointment and was done 'proactively' in the hope of an official appointment. I must, in relation to this issue, also make mention that the plaintiffs were issued with a letter of authorisation dated 8 May 2006 (p 1 of the exh P1 in the plaintiffs' bundle of documents agreed as to

authenticity and content) by the first defendant's deputy director, to prepare and submit drawings for subdivision, sitting application, architectural building plans and all associated works to relevant approving authorities such as Lands and Surveys, Kuching Division and the local council. However, I agree with the defendants' counsel, Ms Sandra Ko that this is not, obviously, a letter of appointment and must be read in the context of the circumstances as the plaintiffs themselves described in the said letter dated 22 August 2006. But, the essence of that letter is also its evidential value as corroborative of the plaintiffs' contention as pleaded that indeed they have done work on the headquarters project at the Kuching site. The defendants' second witness Mr Azman bin Abdul Manap who was the three defendant's senior principal assistant director admitted in cross-examination that the plaintiffs did the design for the headquarters at the Kuching site but that they did not do so based on government procedures or circulars. Dr Yao Sik King's evidence in her witness statement explaining that the headquarters project at the Kuching site was amongst the list of three approved proposed projects that must be implemented within three months in 2006 is also corroborative of the plaintiffs' evidence in their witness statement (and as also pleaded in their statement of claim) that there was an urgency in the implementation of the headquarters project which they and all the stakeholders involved were aware of. That is also the probable explanation why those on the ground were encouraging the proactive efforts of the plaintiffs to design the headquarters at the Kuching site.

[10] However, arriving at the above findings by no means would equate with a positive affirmation of the plaintiffs entitlement to the huge sums of fees they are claiming. Mindful of the Supreme Court's decision in *Tindok Besar Estate Sdn Bhd v Tinjar Co* [1979] 2 MLJ 229 that oral evidence must be weighed and assessed against contemporaneous documents and bearing in mind the frenzy of trying to fastrack the implementation of the project, I again reiterate my view that the plaintiffs were in all reasonable probability initially doing work for the headquarters at the Kuching site on a voluntary and proactive basis as alleged by the defendants and evidenced by the plaintiffs' own admission as stated in the said letter dated 22 August 2006.

ONE PROJECT, TWO SITES

[11] The defendant's witness, Dato' Jagjit Singh who at the time of the trial was a senior deputy undersecretary of the second defendant was asked in his witness statement (at question 14) whether the headquarters project at the Kuching site and the one at the Petra Jaya site are the same and his answer was 'no'. The reason, he said was because the project at the Kuching site 'did not materialise' and the project at the Petra Jaya site 'is at different site altogether'. With respect, such evidence completely lacks justification. What was relocated

was the site; the project remained the same and that was the building/construction of a new headquarters for the first defendant. Therefore the fact that the plaintiffs have done the work for the headquarters project at the Kuching site, such work is not divisible from that which was required of them for the headquarters project in the Petra Jaya site. Although I have said that the project is the same and is not divisible, what I have held earlier, that the initial work done at the Kuching site was voluntarily done still stands but what it also means is that when the plaintiffs were officially appointed as the consultant for the project at the Petra Jaya site, the work they have done for the Kuching site should deserve the defendants' recognition. This moves me to the defence raised that their appointment was for the headquarters project at the Petra Jaya site and does not include the integrated quarters.

TWO PROJECTS, ONE SITE

[12] The headquarters and integrated quarters are two different projects, said Dr Yao Sik King in her cross-examination as can be seen from the List of Projects for the 9th Malaysian Plan reproduced at pp 202–219 of exh P4. The headquarters project is listed at item 176 whilst that of the integrated quarters is at item 171. Indeed both came with their own price tags — RM30m for the headquarters and RM32.5m for the intergrated quarters.

[13] Although the first plaintiff in his witness statement at para 13 said that at the meeting with the first defendant's *Ketua Penolong Pengarah (Pembangunan dan Perolehan)* Encik Wan Uzir, he was also asked to design the integrated quarters, it is clear by his own evidence at para 4 of the said witness statement that the initial brief to him by Dr Yao Sik King on 11 April 2005 was to design the headquarters only. By the first plaintiffs' own letter dated 26 June 2006 (at p 199 of exh P4) enclosing the draft Project Brief to the first defendant's director which brief includes both 'the building and project cost estimate with tabulation of detailed cost of loose furniture, fixed fittings and office equipments', it is also respecting the headquarters and not the integrated quarters. *And*, when the plaintiffs billed the third defendant their claim, based on man-months calculation vide their cover letter dated 29 September 2006, (at p 269 of exh P4), again it too was for the headquarters project only. I also noted that the breakdown of the figures in that billing (at p 271 of exh P4) titled 'Architect Consultants' fees for preparation of conceptual drawings and tender documentations', the sum stated therein is RM173,640. Thus, even when it cannot be denied that there was a subsequent decision to build the integrated quarters on the same Petra Jaya site, the evidence is also clear that at that material time the plaintiffs were doing work for the headquarters project. This position is made even more obvious by the *letter of appointment* at pp 28–30 of exh P1 issued to them which states in para 7 thereof as follows:

Adalah dimaklumkan bahawa Cadangan Projek Kuarters Integrasi JKN Sarawak

yang bukan dalam skop ini adalah terletak juga dalam Lot 78 di Petra Jaya juga. Tuan hendaklah merancang projek Pejabat JKN Sarawak dengan mengambil kira susunatur dan keperluan tanah untuk projek Kuarters Integrasi JKN Sarawak. Skop untuk projek Kuarters Integrasi adalah merangkumi 200 unit kuarters mengandungi 5C, 25D, 70F, 100G. (Emphasis added.)

[14] Exhibit P1, as I indicated earlier, is the plaintiffs' bundle of documents which has been agreed as to authenticity and content by the parties and it is significant also to note that above the printed words 'ATCT Architects' was a signature and official stamp of the plaintiffs' firms. Thus, there is great weight to be attached to this document to prove that the plaintiffs accepted their appointment as consulting architects for the headquarters project and not the integrated quarters project, which acceptance I must give effect to, against the detriment to both parties. I said 'detriment' because I do not think, having issued that letter of appointment, it lies in the mouth of the defendants to dispute the same with the excuse that only if certain government procedures and treasury circulars have been complied with, as per the evidence of Mr Azman bin Abdul Manaf, such as the issuance and acceptance of a letter of intent, would the appointment be considered official. Whilst I do not have the evidence to contradict nor should I doubt that there are indeed these procedures and governmental/departmental requirements in place, but in my view the issuance of the letter of appointment with the stipulated condition to the plaintiffs that it does not include the integrated quarters project and which were duly accepted by them, creates a binding contract between the parties. In other words, plain and simple, there was an offer, then an acceptance of that offer with a valuable/lawful consideration, the payment of the stipulated amount for the work to be done — all ingredients to satisfy the creation of a binding contract under the law. Thus, when the defendants appoint another architect firm without a lawful termination of the plaintiffs' appointment, they have breached that contract with the plaintiffs for which they are entitled to compensation.

THE COMPENSATION

[15] As stated earlier in this judgment, the plaintiffs have claimed RM3,586,940 being the total loss of project fees. The breakdown of that figure which was calculated in accordance with the Lembaga Arkitek Malaysia's Scale of Minimum Fees and which in turn are based on certain percentages of the cost of the project. However, in their witness statement and in their counsel's written submission, that figure has been increased to RM4,786,940. Both figures I must add include the integrated quarters project.

[16] The defendants' stand, on the other hand is that the plaintiffs are not entitled to any payment because said Mr Azman, the memorandum of

agreement has not been signed and that although in the third defendant's letter dated 30 August 2012 (at p 698 of exh P5) the third defendant has assessed the plaintiffs' fees at RM153,759.30, the final payment is still, said the witness, subject to verification of what the plaintiffs were supposed to deliver under paras 4(i) and (ii) of the letter of appointment ie:

> (i) Menyediakan lapan (8) salinan 'Memorandum of Agreement' termasuk Terma Rujukan (Terms of Reference) dan skop kerja.
>
> (ii) Menyediakan perkiraan Yuran Perundingan (fee) dan kos imbuhan balik (*Reimbursables*).

[17] However, that letter dated 30 August 2012, addressed to the second defendant, does not state such conditions but expressed an unequivocal decision to effect payment in the said sum of RM153,759.30. Again given the importance of that letter to my decision herein, I would reproduce it below:

> SEGERA DENGAN POS
>
> Ruj Kami: (65) dlm. PKR(CKK)HOPT 5/4
>
> Tarikh : 30 Ogos 2012
>
> Fax: 03-22873692
>
> Pengarah
>
> Bahagian Perancangan dan Pembangunan
>
> Kementerian Kesihatan Malaysia
>
> Tingkat 8, Blok E6, Precint 1, Kompleks Kerajaan Malaysia
>
> 62590 Putrajaya
>
> (u/p: Dato' Dr. Nooraini Baba
>
> Dato' Jagjit Singh)
>
> Dato',
>
> Cadangan Pembinaan Pejabat Kesihatan Jabatan Kesihatan Negeri Sarawak—Yuran Iktisas Untuk Juruperunding Senibina ATCT Architect
>
> Adalah saya merujuk kepada perkara di atas dengan hormatnya dan juga surat pihak Yang Berhormat Dato' rujukan (55) KKM-BPP.UPPP/100-12/1/1 Jld 6 bertarikh 11 Julai 2012.
>
> 2. Lanjutan daripada beberapa siri mesyuarat dan perbincangan berkenaan dengan tuntutan ATCT Architects, pihak kami telah membuat keputusan bahawa pihak JKR akan membuat penilaian dan pembayaran di atas khidmat runding oleh ATCT Architect berdasarkan surat perlantikan rujukan PKR(CKK)UPK9.4/Q1(18) bertarikh 9 Februari 2007. Justeru itu sejak keputusan ini diambil sekitar April/Mei 2012, pihak Cawangan Kerja Kesihatan dengan kerjasama Cawangan Arkitek telah

mengadakan beberapa sesi penilaian dan perbincangan untuk mengesahkan jumlah yuran yang dianggap sesuai.

3. Pihak ATCT juga telahpun mengemukakan cadangan teknikal dan kewangan untuk semakan dan penilaian oleh Jawatankuasa Teknikal dan Kewangan Perunding (JTKP) di peringkat Cawangan Arkitek. *JTKP telahpun bersidang pada 3 Ogos 2012 yang lalu dan jumlah yuran yang telah diputuskan adalah sebanyak RM 153,759.30.*

4. Setelah menyemak daripada peruntukan pembangunan untuk projek Pejabat Kesihatan Jabatan Kesihatan Negeri Sarawak dan Kuarters Integrasi, pihak kami mendapati bahawa masih terdapat baki sebanyak RM2.9 juta. Untuk makluman Yang Berhormat Dato', akaun untuk projek ini masih belum dimuktamadkan. Pihak kami memohon persetujuan daripada pihak Yang Berhormat Dato' untuk menggunapakai sebahagian daripada baki ini untuk menjelaskan tuntutan daripada ATCT Architect ini memandangkan perlantikan syarikat ini pada asalnya adalah bagi projek yang sama. (Emphasis added.)

[18] The decision to pay the plaintiffs was actually in accordance with the opinion of the third defendant's then legal advisor, Alice Loke Yee Ching in her letter dated 2 March 2012 (at p 558 to 562 of exh P5) though, to be fair, she did not state the amount. The third defendant, in its letter dated 11 June 2012 (at p 670 of exh P5) wrote to the second defendant confirming that in their meeting held on 9 February 2012 they have agreed in principle to pay the plaintiffs. Thus, that letter dated 30 August 2012 assessing the fees at RM153,759.30 must be read in the light of these two above-mentioned letters since it came after the decision have been reached to effect the payment. It therefore binds the defendants in favour of the plaintiffs because, as I have mentioned earlier, the letter of appointment has capped their fees at RM173,640. I must again stressed, at this end stage of my judgment, that the plaintiffs have accepted the same in toto without any qualifications and/or conditions and since there was no other detailed agreements executed or expressed by the parties to apply to the appointment of the plaintiffs, what is stated in that letter of appointment should be the final determining sum in relation thereto and is in my view, adequate compensation to the plaintiffs for being unceremoniously removed as the consultant architect for the headquarters project.

[19] Thus, for all the above reasons, I would enter judgment for the plaintiffs but only in the sum of RM173,640 with interest at 5%pa from the date of the service of the writ of summons and statement of claim until full and final settlement thereof. As for costs, given that the plaintiffs were able to get judgment for a fraction of what they claimed, cost is fixed according to the Scale of Fees under O 59 r 23(1) of the Rules of Court 2012 which is RM1,750 (for suing) plus RM6,950 (for advocacy) making a total at RM8,700.

Claim allowed.

Reported by Afiq Mohamad Noor